IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 182 of 1998()

CRA.199/1994 of IIND ADDL.SESSIONS COURT-II, KOZHIKODE
CC.391/1983 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE
.....

REVN. PETITIONER: APPELLANT/ ACCUSED 1 TO 3
----

1. C.CHANDRAN, S/O. AYYAPPAN.

2. SIVADASAN, S/O. AYYAPPAN.

3. SATHIANDRAN, S/O. AYYAPPAN.

BY ADV. SRI.ALAN PAPALI
SRI.M.P.PRABHANANDAN

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA,(S.I. OF POLICE,
NALLALAM – CRIME NO.192/91)
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP NO.182/1998

ORDER ON CMP. NO. 972/1998 IN CRL.RP. NO.182/1998

DISMISSED.

09.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO. 182 OF 1998

DATED THIS THE 9th AUGUST 2007

ORDER

The revision petitioners are the accused in C.C.No. 391/1993 in the file of the Judicial First Class Magistrate Court-V, Kozhikode who stand convicted for the offence under Sections 143, 148, 427, 435 read with Section 149 I.P.C. and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- each and in default to undergo rigorous imprisonment for three months each. 50% of the fine amount is ordered to be paid to PW4 as compensation.

2. The prosecution case is that the accused in furtherance of the common intention unlawfully assembled in front of the house of CW5, i.e. PW4 at Perumana amsom committed rioting with deadly weapons and caused damage to the bus belonging to PW4 and smashed the front glass with an iron rod and set on fire causing damage of Rs.75,000/-. Although charge sheeted the five accused for the offence under Sections 143, 148, 427, 435 read with Section 149 I.P.C., accused 4 and 5 were

acquitted by the trial court itself.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 6 and Exts.P1 to P4 and MO.1 burnt tarpaulin. PW1 is the son of PW4, who has lodged F.I.S. According to him, he along with PW2 was sleeping inside the bus. According to him he has identified the accused in the street light and in the mercury light that emanated from the house. PW2 is the driver of the bus. He has also testified in support of the prosecution. PW3, neighbour is the occurrence witness. The version of PW3 was not relied on by the courts below. According to the version of PW4, the owner of the house, he came out of the house on hearing the hue and cry by Pws.1 and 2. His version is not helpful so far as the identification of the accused is concerned. I find that the evidence of Pws.1 and 2 as to the identity of A1 to A3 stands not discredited. Of course, there is no objective evidence as to the loss caused except the interested version of PW1. Ext.P3 scene mahazar is silent with respect to the extent of damage sustained, although it is noted that the rear tyres were seen set fire and the front glass broken. In the circumstances and in the light of the concurrent findings of the

courts below, I find no reason to interfere in the findings of the conviction of the accused under Section 435 I.P.C. The conviction is confirmed.

Counsel for the revision petitioners has pleaded for modification of sentence pointing out that the incident has taken place in 1991 and that 17 years have elapsed since the commencement of the proceedings and so far as the accused was facing the criminal proceedings. In the circumstances I find that the sentence is liable to be modified. Hence, the sentence is modified to imprisonment till the rising of the court and to pay Rs.10,000/- each as compensation to PW1 and in default to undergo simple imprisonment for six months each. The revision petitioners are granted one month time to remit the amount of compensation. They shall appear before the Judicial First Class Magistrate-V, Kozhikode on 28-9-2007 to receive sentence. The Crl. revision petition is disposed of accordingly.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.R.P. NO. 182 OF 1998
ORDER

9-8-2007